

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA)	
)	
v.)	No. 5:2001-CR-00012
)	
DONALD FELL)	

DEFENSE PROPOSED SUPPLEMENTAL AGENDA ITEMS FOR
APRIL 10, 2015 PRETRIAL CONFERENCE

In addition to the matters suggested in the Court's draft agenda, defense counsel respectfully suggest that the following topics should be discussed on April 10, 2015. Further, the defense notes here that it is unlikely to be in a position to discuss the Court's proposed draft agenda item 2: Mental Health Exams by Either Side, for reasons explained in the defense's Pretrial Conference Memorandum (Doc 535). Newly appointed counsel are entirely new to this case, are just beginning to acquire and review file materials and are in no position, at present, to make informed decisions about mental health examinations given the various related issues that were addressed at trial in the first instance, and in post-conviction litigation in the second.

That said, the defense respectfully suggests that the following topics be added to the Court's draft agenda:

1. Procedures to ensure preservation of case records and evidence in the hands of law enforcement agencies;
2. Resolution of issues raised in the Fell 2255 team's Statement of Disputed

Discovery (Doc 425), in view of Judge Sessions' Memorandum and Order Re: Discovery (Doc 458, 12/19/2013), and in view of this Court's Order of March 5, 2015 (Doc 530).

It appears to the defense that the Government had been permitted to reply to Doc 425 and that Judge Sessions has resolved a number of the pertinent questions. The defense believes that Judge Sessions may be in the best position to address the various claims of misconduct and discovery violations, as well as issues bearing on alleged improprieties by the Government in trial related discovery practice, and by at least one Government expert and related examiners during the 2255 litigation (see the allegations in the Statement of Disputed Discovery, Doc 425, filed 10/25/13). Finally, allowing briefing by newly assigned counsel, after their file review, on evidence that should be excluded from retrial as defense file or work product information from the 2255 proceedings;

3. Discovery by the newly named defense counsel of the Government's case related discovery (which has already been discussed to some degree between the parties), including explanations of protocols related to the Government's acquisition of case-related reports, and witness interview materials from state and local agencies;

4. Acquisition of Mr. Fell's Federal Bureau of Prisons files and records by the parties;

5. Review of the defense's case management proposals from the defense pretrial conference memorandum, including proposal for another pretrial conference 45 days from now, and for the development and submission of a staggered litigation schedule for pretrial motions be submitted by the parties at a future pretrial conference;

6. Case management protocol for protection of file materials and defense counsel work product from the first trial in view of post-conviction litigation which permitted the Government access to defense counsels' files and records to permit resolution of ineffectiveness claims that were never reached;

7. Case related CJA management system, for defense counsel (is this Court managing CJA issues from this point forward?);

8. Production of transcripts whenever the Court is addressing substantive issues or taking testimony;

9. Discussion of death qualified defense counsels' scheduling conflicts and related defense case management plan;

10. Housing of Mr. Fell during pretrial proceedings.

Dated at San Francisco, California, this 7th of April, 2015.

Dated: April 7, 2015

Respectfully Submitted,
MICHAEL N. BURT
KERRY DeWOLFE
JOHN T. PHILIPSBORN

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2015, I electronically filed with the Clerk of Court the following document(s):

**DEFENSE PROPOSED SUPPLEMENTAL AGENDA ITEMS FOR
APRIL 10, 2015 PRETRIAL CONFERENCE**

using the CM/ECF system. The CM/ECF system will provide service of such filing(s) via Notice of Electronic Filing (NEF) to the following NEF parties:

Michael N. Burt, Esq.
Kerry B. DeWolfe, Esq.
Julie B. Mosley, Esq.
William B. Darrow, Esq.

I also caused to be served, by U.S. Postal Service, the following non-NEF party:

Donald Fell
Register Number 05306-010
The Metropolitan Detention Center
P.O. Box 329002
Brooklyn, NY 11232

Dated at San Francisco, California, this 7th day of April, 2015.

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